

(c) The designee may regulate the course of the proceedings and the conduct of parties during the pendency of the proceedings. The designee takes all steps necessary to conduct a fair and impartial proceeding, to avoid delay, and to maintain order.

(d) The designee may interpret applicable statutes and regulations, but may not waive them or rule on their validity.

(e) The designee arranges for the preparation, retention, and, if appropriate, dissemination of the record of the hearing.

(Authority: 20 U.S.C. 1413(d)(3)(A))

§ 300.485 Decision.

(a) The designee who conducts the show cause hearing—

(1) Issues a written decision that includes a statement of findings; and

(2) Submits a copy of the decision to the Secretary and sends a copy to each party by certified mail with return receipt requested.

(b) Each party may submit comments and recommendations on the designee's decision to the Secretary within 15 days of the date the party receives the designee's decision.

(c) The Secretary adopts, reverses, or modifies the designee's decision and notifies the SEA of the Secretary's final action. That notice is sent by certified mail with return receipt requested.

(Authority: 20 U.S.C. 1413(d)(3)(A))

§ 300.486 Filing requirements.

(a) Any written submission under § 300.482–300.485 must be filed by hand-delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages.

(b) The filing date under paragraph (a) of this section is the date the document is—

(1) Hand-delivered;

(2) Mailed; or

(3) Sent by facsimile transmission.

(c) A party filing by facsimile transmission is responsible for confirming that a complete and legible copy of the document was received by the Department.

(d) If a document is filed by facsimile transmission, the Secretary or the hearing officer, as applicable, may require the filing of a follow-up hard copy by hand-delivery or by mail within a reasonable period of time.

(e) If agreed upon by the parties, service of a document may be made upon the other party by facsimile transmission.

(Authority: 20 U.S.C. 1413(d)(3)(A))

[57 FR 56796, Nov. 30, 1992]

§ 300.487 Judicial review.

If dissatisfied with the Secretary's final action, the SEA may, within 60 days after notice of that action, file a petition for review with the United States court of appeals for the circuit in which the State is located. The procedures for judicial review are described in section 613(d)(3)(B)–(D) of the Act.

(Authority: 20 U.S.C. 1413(d)(3)(B)–(D))

[57 FR 44798, Sept. 29, 1992. Redesignated at 57 FR 56796, Nov. 30, 1992]

Subpart E—Procedural Safeguards

DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

§ 300.500 Definitions of “consent,” “evaluation,” and “personally identifiable.”

(a) As used in this part: *Consent* means that—

(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;

(2) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(b) *Evaluation* means procedures used in accordance with §§ 300.530–300.534 to determine whether a child has a disability and the nature and extent of

the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class.

(c) *Personally identifiable* means that information includes—

- (1) The name of the child, the child's parent, or other family member;
- (2) The address of the child;
- (3) A personal identifier, such as the child's social security number or student number; or
- (4) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

(Authority: 20 U.S.C. 1415, 1417(c))

§ 300.501 General responsibility of public agencies.

Each SEA shall ensure that each public agency establishes and implements procedural safeguards that meet the requirements of §§ 300.500–300.515.

(Authority: 20 U.S.C. 1415(a))

§ 300.502 Opportunity to examine records.

The parents of a child with a disability shall be afforded, in accordance with the procedures of §§ 300.562–300.569, an opportunity to inspect and review all education records with respect to—

- (a) The identification, evaluation, and educational placement of the child; and
- (b) The provision of FAPE to the child.

(Authority: 20 U.S.C. 1415(b)(1)(A))

§ 300.503 Independent educational evaluation.

(a) *General.* (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(3) For the purposes of this part:

- (i) *Independent educational evaluation* means an evaluation conducted by a

qualified examiner who is not employed by the public agency responsible for the education of the child in question.

(ii) *Public expense* means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with § 300.301.

(b) *Parent right to evaluation at public expense.* A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a hearing under § 300.506 to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(c) *Parent initiated evaluations.* If the parent obtains an independent educational evaluation at private expense, the results of the evaluation—

(1) Must be considered by the public agency in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) *Requests for evaluations by hearing officers.* If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) *Agency criteria.* Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

(Authority: 20 U.S.C. 1415(b)(1)(A))

§ 300.504 Prior notice; parent consent.

(a) *Notice.* Written notice that meets the requirements of § 300.505 must be given to the parents of a child with a disability a reasonable time before the public agency—

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or